



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF T-A-Y-

DATE: NOV. 20, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a business development manager and consultant, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, but that she had not had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

The Petitioner appealed the matter to us. We dismissed the Petitioner's appeal, and reaffirmed that decision in our adjudication of four subsequent motions to reopen.¹ Contrary to the Director's determination, we also found that the Petitioner had not established she qualified for the underlying immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. The matter is now before us on a fifth motion to reopen. We will deny the motion.

I. LAW

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

¹ *Matter of T-A-Y-*, ID# 350645 (AAO Feb. 28, 2017) was our most recent decision in this matter.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

Furthermore, in order to demonstrate exceptional ability, a petitioner must submit at least three of the types of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

On motion, the Petitioner provides information indicating that her occupation meets the definition of a profession. In addition, she maintains that her master of public administration degree from [REDACTED] in Bulgaria is a qualifying advanced degree. The record, however, does not contain an academic credentials evaluation to establish her foreign degree's equivalency to a United States degree as required under 8 C.F.R. § 204.5(k)(3)(i)(A). We therefore affirm our previous finding that the Petitioner has not established her eligibility as a member of the professions holding an advanced degree.

B. Exceptional Ability

On motion, the Petitioner repeats previous arguments that she satisfies at least three of the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii). As discussed below, our review of the documentation provided on motion does not show that she meets at least three criteria.

In our appellate decision dated July 2, 2014, we determined that the Petitioner's degrees from [REDACTED] satisfied the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), which requires evidence of "a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability." With respect to the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B)-(E), the Petitioner's motion does not include new evidence to show that she satisfies any of those additional criteria.

The regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) requires “[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.” With the current motion, the Petitioner submits two webpages reflecting that she served as [REDACTED] of the [REDACTED] beginning in 2016.² In addition, she provides an email indicating that she participated in the [REDACTED] in California in [REDACTED] 2017.

The Petitioner’s service as co-chair for [REDACTED] and participation in the [REDACTED] both post-date the filing of the petition. Eligibility must be established at the time of filing. See 8 C.F.R. § 103.2(b)(1), (12). Regardless, the aforementioned webpages and email are insufficient to demonstrate that she has been recognized for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. Therefore, the Petitioner has not overcome our finding that she does not meet the regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F). Accordingly, the new evidence offered on motion does not establish that the Petitioner meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and that she has achieved the level of expertise required for exceptional ability classification.

C. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. As explained in our prior decisions, in order to qualify for a national interest waiver, the Petitioner must first show that she qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. As the Petitioner has not established eligibility for the underlying immigrant classification, we need not consider whether she is eligible for a national interest waiver under the framework set forth in *Dhanasar*.

III. CONCLUSION

The evidence provided in support of the motion to reopen does not overcome the grounds underlying our previous decision. The Petitioner has not established eligibility as a member of the professions holding an advanced degree or as an individual of exceptional ability.

ORDER: The motion to reopen is denied.

Cite as *Matter of T-A-Y-*, ID# 709898 (AAO Nov. 20, 2017)

² This material indicates that [REDACTED] is comprised of [REDACTED] alumni and “not just [REDACTED] Graduates.” The record does not show that the Petitioner holds a baccalaureate, master’s degree, or doctorate from [REDACTED]